

REMARKS

Procedural Review:

On December 18, 2008 Applicant received a notice of abandonment for failure to timely respond to an office action issued on April 4, 2008. Upon receipt of the notice of abandonment, counsel began preparing the response to the outstanding office action. In response thereto, a petition for revival of an application for patent abandoned unintentionally under 37 C.F.R. 1.137(b) was submitted on March 18, 2009 along with the requisite petition fee. The petition was granted on April 13, 2009.

Substantive Review & Election/Restrictions:

A response to the April 4, 2008 office action was also filed on March 18, 2009. In the response, previously presented claims 10-46 were replaced with claims 47-67 in order to overcome the pending prior art rejection and place the claims in better condition for allowance. In response, the Examiner has refused to reexamine the claims, instead summarily withdrawing them from consideration, stating that the claims are directed to an invention that is independent or distinct from the invention originally claimed. The Examiner argues that the original claims were drawn to a video distribution center while claims 47-67 are drawn to the conversion of high-speed packetized information. As shown below, this conclusion by the examiner is in error.

Applicant respectfully submits that claims 47-67 are not independent or distinct from the originally claimed invention and that the finality of the office action, without addressing the claim amendments and arguments presented with the prior response, is premature and inappropriate. Specifically, the elements found in independent claims 47, 58, and 62 can be found in originally filed claims 1 & 20 previously under examination. Furthermore, it is

inappropriate for the Examiner to lump previously pending claims 10-36 under a general “video distribution center” category as the previously presented claims had a much wider scope that warrants against the conclusion that the new claims are drawn toward a non-elected invention.

More specifically, previously pending claims 10-36 were drawn to e.g. (i) a method of distributing high-speed information packets, (ii) a system for providing high-speed packetized information, (iii) a system for providing packetized video information, and (iv) a system for distributing high-speed information packets. The scope of these prior claims is entirely consistent with the present claims which are similarly directed toward (i) a system for distributing high-speed packetized information (*See e.g.* claims 47 and 58), and (ii) a method of distributing high-speed information packets (*See e.g.* claim 62). Even a cursory examination of the claims at issue show that the newly presented claims did not veer from the previously elected invention. The examiner would not be required to conduct a new search and the withdrawal of these claims in inappropriate.

Therefore, Applicant is requesting the Examiner remove the withdrawal of claims 47-67 from consideration, remove the finality of the rejection, and reconsider the amended claims 47-67, as attached herein in light of the prior art of record.

Rejection Under 35 U.S.C. § 112

Although the Examiner states that claims 47-67 are directed to an invention that is independent or distinct from the invention originally claimed and therefore has withdrawn claims 47-67 from consideration, the Examiner states that even if claims 47-67 were directed to the same invention as originally claimed, claims 47-67 recite limitations which are not adequately described in the specification. Specifically, the Examiner states that the specification fails to describe the “second optical format” claims 47, 58, and 62. Although Applicant in no way acquiesces to the Examiner’s argument, in order to further prosecution, Applicant has further

amended the claims, providing for a second format instead of a second optical format. As admitted by the examiner, these elements find support in the specification. Thus, any potential rejection under 35 U.S.C. § 112 has been overcome.

Recap of Prior Substantive Response

The following is provided again in order for the Examiner to address the previously submitted comments and amendments that were directed at the prior rejections under Sections 102 and 103. In the April 29, 2009 office action, the Examiner did not address applicant's substantive responses to the prior art rejections and requests that those responses be addressed here.

It is submitted that claims 47-67 more particularly point out aspects of the present invention that better distinguish the claims over the prior art of record than claims 10-46. Each of the independent claims 47, 58, and 62 are directed toward an information delivery system and/or method for the delivery of high-bandwidth information (e.g. video data) through a distributed network and by utilizing *more than one format* for the delivery of the data or information. For example, claim 47 specifies, *inter alia*, “a host digital terminal distribution center for converting the high-speed packetized information to an *optical format*” and an “optical network unit in communication with the distributed routing network and adapted to convert the packetized information *from the first optical format to a second format*.” While the claims are not necessarily limited to any specific implementation, in practice, this allows the distribution of large volumes of data, such as that present in the distribution of video, through a hybrid communication path, and takes advantage of legacy type systems that may be present in legacy telecommunication delivery networks.

In one example, the first portion of the distribution path might comprise a fiber optic network extending from the distribution center to an intermediate point between the subscriber

and the distribution center. A second portion of the distribution path might comprise another type of transmission medium, such as copper wire, coaxial cable or another legacy medium found in the last mile of many data distribution systems up to and including many homes and other subscriber locations. The presently presented claims recognize that the optical format for each of these points in the distribution network are varied and takes advantage of an “optical network unit” in order to *“convert the packetized information from the optical format to a second format.”* Each of independent claims 47, 58 and 62 contain similar limitations and are similarly distinguishable over the prior art of record.

Claim Rejections 35 USC § 102 and 103

The only reference relied upon to support the Examiner’s rejections in the April 4, 2008 office action under 35 USC § 102 is Ganz et al. (USPN 6,584,080). All other rejections are based on Ganz plus one or more combinations of prior art under 35 USC § 103. Based on the amendments made to the pending claims, Applicant submits that the rejections based on Ganz, alone or in combination with the other references, are now moot. The rejections under § 103 are also rendered moot by the presently presented claims. Ganz is directed specifically to radio communications repeaters used to access a common geographically distributed radio channel. Ganz does not describe the distribution of high-bandwidth data, such as video, through a network that converts the video data into an optical format and from the optical format to a second format for distribution to a subscriber. The Ganz system essentially contains the following elements: a host radio station, a plurality of wireless repeaters and an end user in communication with the distribution network formed by the host radio station and the plurality of wireless repeaters. Other aspects of Ganz relate specifically to the communications protocols used in the delivery of data over the distribution network and how the data might be routed through a particular set of repeaters.

While aspects of the presently presented claims might utilize in some embodiments, a distributive routing network such as described in Ganz, the optical delivery and conversion systems and methods described in the present claims are not contemplated by Ganz. In fact, the Examiner has already conceded that Ganz does not describe the optical conversion aspects contemplated herein:

Ganz does not expressly disclose that the HDT converts the high-speed information packets to an optical format. April 4, 2008 office action at p. 14.

Likewise, the other prior art cited by the Examiner does not describe in any way, alone or in combination, the specific aspects of utilizing a host digital terminal distribution center for “*converting the high-speed packetized information to an optical format*” and an optical network unit in communication with the distributed routing network and adapted to “*convert the packetized information from the optical format to a second format*.¹²”

For example, Fluss (USPN 6,304,578), is, like Ganz, directed toward an information packet routing scheme such that one or more routers queue the data packets, and assigns high transmittal priority to data packets addressed to users who have more recently received a previous data packet. In essence, Fluss is a prioritization system that recognizes which user might demand priority in accessing a particular network data resource. And while the examiner has previously relied on Fluss for the proposition that it discloses the conversion of data packets to an optical format for distribution over a high-transmission capacity optical network, Fluss only contemplates that this high-capacity network is extended all the way to an end user. Fluss does not describe a system where the information packets are converted from an optical format to a second format, such that the distribution system can take advantage of existing data distribution systems already in place within the “last mile” to a subscriber unit. Similarly, none of Lewis, Gulliford, Gallagher or the T.T. Lee article describe the specific combination that is embodied by the presently presented claims.

Claims 48-57, 59-61 and 63-67 are dependent upon independent claims 47, 58 and 62 and are likewise in condition for allowance.

Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Shane Percival, Applicants' Attorney at 720-536-4906 so that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

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Date

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